

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD REID, LEE REID, and
REIDESIGNE' LANDSCAPE
CONTRACTORS, INC.,

Defendants.

No. 06 C 1103

Chief Judge James F. Holderman

CONSENT DECREE

WHEREAS, the plaintiff, the United States of America, on behalf of the United States Army Corps of Engineers (the "Corps of Engineers"), filed an amended complaint against defendants Richard Reid, Lee Reid, and ReiDesign' Landscape Contractors, Inc., alleging that defendants violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a);

WHEREAS, the amended complaint alleges that defendants violated CWA Section 301(a) by causing dredged material to be discharged into waters of the United States located on property adjacent to the Nippersink Creek, in Solon Mill (Northwest Quarter of Section 26, Township 46 North, Range 8 East), McHenry County, Illinois ("the site");

WHEREAS, the amended complaint alleges that the discharge of dredged material was without authorization by the Corps of Engineers and is more fully described in the amended complaint in this case;

WHEREAS, the amended complaint seeks: (1) an order enjoining the defendants from any further unpermitted discharge of fill and/or dredged material into the waters of the United States, and requiring defendants to remove the fill and/or dredged material and restore the area; (2) an order

enjoining the defendants from discharging any pollutant into navigable waters of the United States without a permit; (3) an award to plaintiff of an appropriate civil penalty pursuant to the terms of 33 U.S.C. §§ 1319(b) and 1344 for each day on which each violation occurred; (4) an award to plaintiff for its costs in connection with this action; and (5) an award to plaintiff of such further relief as this court deems just;

WHEREAS, the defendants now admit the allegations in the amended complaint and that they violated the CWA;

WHEREAS, the defendants have completed restoration of the property in question and now wish to settle this lawsuit to avoid the substantial legal fees necessary to properly defend themselves and the inherent uncertainties of litigation;

WHEREAS, this consent decree is intended to constitute a complete and final settlement of the United States' claims under the CWA in the amended complaint regarding the site;

WHEREAS, the United States and defendants agree that settlement of this case is in the public interest and that entry of this consent decree is the most appropriate means of resolving the United States' damages claims under the CWA against defendants in this case; and

WHEREAS, the court finds that this consent decree is a reasonable and fair settlement of the United States' claims against defendants in this case, and that this consent decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, before the taking of any testimony and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. Jurisdiction and Venue

1. This court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the Northern District of Illinois pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the subject property is located in this district, and the causes of action alleged herein arose in this district.

3. The amended complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

II. Applicability

4. The obligations of this consent decree shall apply to and be binding upon defendants, their agents, employees and servants, and successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with the defendants whether or not such person has notice of this consent decree. In any action to enforce this consent decree defendants shall not raise as a defense the failure of any of their agents, employees, successors or assigns or any person, firm or corporation acting in concert or participation with defendants, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the site shall not alter or relieve defendants of their obligations to comply with all of the terms of this consent decree. As a condition to any such transfer, defendants shall reserve all rights necessary to comply with the terms of this consent decree.

III. Scope of Consent Decree

6. This consent decree shall constitute a complete and final settlement of all civil claims for injunctive relief and/or civil penalties alleged in the amended complaint against defendants under CWA Section 301 for the matters alleged in the amended complaint.

7. It is the express purpose of the parties in entering this consent decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All obligations in this consent decree or resulting from the activities required by this consent decree shall have the objective of causing defendants to achieve and maintain full compliance with, and to further the purposes of, the CWA.

8. This consent decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344 or any other law. Nothing in this consent decree shall limit the ability of the Corps of Engineers to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this consent decree limit the EPA's ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

9. This consent decree in no way affects or relieves defendants of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.

10. This consent decree does not relieve defendants of liability for any violations of the Clean Water Act other than those alleged in the amended complaint.

11. This consent decree in no way affects the rights of the United States as against any person not a party to this consent decree.

12. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this consent decree and applicable law.

IV. Specific Provisions

Civil Penalties

13. Defendants shall pay a civil penalty to the United States in the aggregate amount of fifty-five thousand dollars (\$55,000) for which they are jointly and severally liable. Contemporaneously with the entry of this consent decree, the parties agree and the defendants consent to entry of a judgment against defendants in the amount of fifty-five thousand dollars (\$55,000). This settlement is based on the defendants' disclosure of their financial circumstances and their ability to pay an appropriate civil penalty.

14. The civil penalty pursuant to this consent decree constitutes a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and is not a tax deductible expenditures for purposes of federal law.

Permanent Injunction

15. Defendants, and their agents, successors and assigns are permanently enjoined from discharging any pollutant into waters of the United States unless such discharge complies with the Clean Water Act (33 U.S.C. §§ 1251 *et seq.*) and its implementing regulations. 33 C.F.R. Part 320 *et seq.*

VI. Addresses

16. All notices and communications required under this consent decree shall be made to the parties through each of the following persons and addresses:

A. To the Corps of Engineers:

Mitchell A. Isoe
Chief, Regulatory Branch
111 North Canal Street
Suite 600
Chicago, Illinois 60606

B. To the United States Department of Justice

Donald R. Lorenzen
Assistant United States Attorney
219 South Dearborn St.
5th Floor
Chicago, Illinois 60604

C. To Defendants:

Richard Reid
30279 North Fairfield Road
Grayslake, Illinois 60030

Leland Reid
3319 East Solon Mills Road
P.O. Box 367
Spring Grove, Illinois 60081

ReiDesigne' Landscape Contractors, Inc.
30279 North Fairfield Road
Grayslake, Illinois 60030

with a copy to:

Albert L. Wysocki
325 Washington Street
Suite 401
Waukegan, Illinois 60085-5520

During the pendency of this consent decree, defendants will, as soon as practicable, provide the Corps of Engineers and the United States Department of Justice written notice of any change in their addresses.

VII. Costs of Suit

17. Each party to this consent decree shall bear its own costs and attorneys' fees in this action. Should defendants subsequently be determined by the court to have violated the terms or conditions of this consent decree, defendants shall be liable jointly and severally for any costs or

attorneys' fees incurred by the United States in any action against defendants for noncompliance with or enforcement of this consent decree.

VIII. Public Comment

18. The parties acknowledge that after the lodging and before the entry of this consent decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this consent decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this consent decree, unless the United States has notified defendant in writing that it no longer supports entry of the consent decree.

IX. Continuing Jurisdiction of the Court

19. This court shall retain jurisdiction over this action in order to enforce or modify the consent decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this consent decree. During the pendency of the consent decree, any party may apply to the court for any relief necessary to construe and effectuate the consent decree.

X. Final Judgment

20. Upon its entry by the court, this consent decree shall have the force and effect of a final judgment.

IT IS SO ORDERED.

Dated and entered this 30 day of August, 2007.

United States District Judge

ON BEHALF OF DEFENDANTS:

Dated: 8-30-07

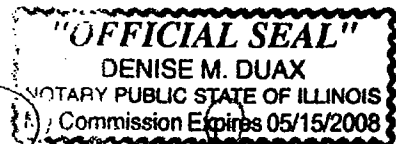
Richard Lloyd Reid

30279 North Fairfield Road
Grayslake, Illinois 60030

Subscribed and sworn to before me
this 30 day of August, 2007

Denise M Duax

Notary Public



Dated: 8-30-07

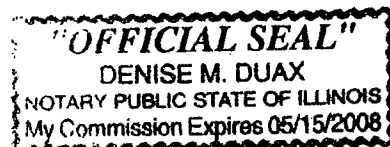
Lee Reid

3319 East Solon Mills Road
P.O. Box 367
Spring Grove, Illinois 60081

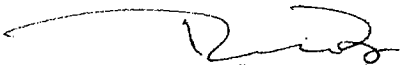
Subscribed and sworn to before me
this 30 day of August, 2007

Denise M Duax

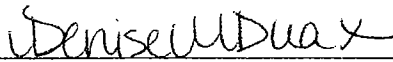
Notary Public

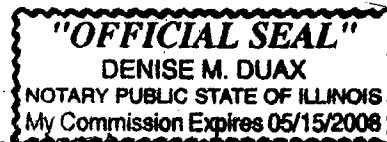


Dated: 8-30-07


Richard Lloyd Reid, President
ReiDesigne' Landscape Contractors, Inc.
30279 North Fairfield Road
Grayslake, Illinois 60030

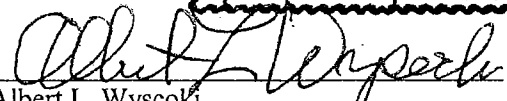
Subscribed and sworn to before me
this 30 day of August, 2007


Notary Public



COUNSEL FOR DEFENDANTS:

Dated: 8-30-07


Albert L. Wyszoki
325 West Washington Street, Suite 401
Waukegan, Illinois 60085

ON BEHALF OF THE UNITED STATES OF AMERICA:

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United States Attorney

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